BEFORE THE LAND USE HEARINGS EXAMINER
FOR CLARK COUNTY, WASHINGTON

In the matter of an appeal of a Type II staff decision approving a site plan for a vehicle towing and police impound storage lot in the ML Light Industrial District in unincorporated Clark County, Washington. Original Application: PRS 2004-00019	**FINAL ORDER** ABC Towing Appeal APL 2004-00021

I. Summary:

This Order is the decision of the Clark County Land Use Hearings Examiner denying in part and upholding in part the appeal and approving this site plan and related permits to establish a vehicle towing and police impound storage business on a 0.97-acre parcel zoned ML Light Industrial, with the following modification to Condition C-1:

C-1 The applicant shall revise the proposed landscape plan to show:

a. On the north, the required landscaping scheme is an L3 in a 10-foot buffer width.
b. On the east, the required landscaping scheme is an L2 in a 10-foot buffer width.
c. On the south, the required landscaping scheme is a L2 landscaping in a 10-foot buffer where the site abuts NE Kerr Avenue and L1 landscaping in a 5-foot buffer where the site abuts TL 60. The applicant shall still comply with the sight distance requirements of CCC 40.350.030(B)(8) at its driveway onto NE 134th Avenue.
d. On the west, the required landscaping scheme is an L3 in a 10-foot buffer width (*See* Land Use Finding 2).

II. Introduction to the Property, Application and Appeal:

Owners.....David & Shelley Langley
13417 NE 71st Street
Vancouver, WA 98682

Applicant & Appellant..... Moss & Associates, Inc.
Attn: Geoff Appel
717 NE 61st St., Suite 202
Vancouver, WA 98665

Property ..... Location: 13417 NE 71st Street. Legal Description: TL 52 (parcel no. 158626) NW ¼ of Sec 11, T2N, R2E, WM.

Applicable Laws..... Clark County Code (CCC) chapters 40.570.080 (SEPA), 40.610 (Impact Fees), 40.230.080 (Industrial Districts), 40.520.040 (Site Plan Review), 40.310 (Signs), 40.570.080(C)(3)(k) (Archaeology), 40.410 (CARA), 40.350 (Transportation Standards), 40.350.020 (Concurrency), 40.380 (Stormwater and Erosion Control), 40.350.020 (C) (Water Connection), 40.370.020(C) (Sewer Connection), 15.12 (Fire Protection), 40.510.030 (Procedures).

A. <u>The Property and the Underlying Application</u>: The underlying site plan application sought approval to establish and operate a vehicle towing and police impound storage business on approximately 0.97 acres zoned Light Industrial (ML). The proposed vehicle towing and police impound business is allowed in the ML district according to CCC Table 40.230.080-1(G)(2) subject to the performance standards in CCC 40.230.080(D)(5) regarding outdoor storage. The location and orientation of the property is also relevant to this appeal. The site is 0.97 acres and is completely surrounded by dedicated public rights-of-way (Ex. 1): NE 71st Street, NE 134th Avenue, NE Kerr Avenue and NE 135th Avenue. All four streets have a dedicated 60-foot right-of-way adjacent to this property, but only three of these streets are actually developed, *i.e.,* NE 135th Avenue is <u>not</u> currently developed as a street, but the others are.

Two issues from the underlying application (Exs. 1 & 2), and subsequent approval staff approval (Exs. 9 & 11) are relevant and will be discussed further, *viz*., street frontage improvements and perimeter landscaping. First, the application included a road modification that sought relief from the CCC 40.350.030(B)(5), which requires a land use applicant to construct half-street frontage improvements to <u>all</u> abutting street frontages and bring them up to the County's planned standards. The applicant sought to avoid entirely all frontage improvement requirements, despite being surrounded on four sides by public rights-of-way.

Second, CCC Table 40.320.010-1 requires perimeter landscaping around ML industrial uses. In this particular case, staff reported that L2 landscaping and a 10-foot buffer were required on the east and south sides of the property, and L3 landscaping and a 10-foot buffer on the north and west sides of the property. The applicant requested a reduction in the landscaping standard along the south boundary, which abuts an industrially zoned but residentially developed lot (TL 60), especially the 30 feet nearest NE 134th Avenue. According to the applicant, full compliance with this landscape standard is not needed because of a well-developed laurel hedge on the adjacent parcel, the fact that the residents of the home on that lot (TL 60) do not want additional perimeter landscaping on the vehicle impound lot, and additional landscaping could create a sight distance problem at the impound lot's driveway onto NE 134th Avenue.

B. <u>The Director's Decision and Conditions</u>: The Director approved the site plan and related permits (Ex. 11), including some but not all of the requested road modification (Ex. 9). Instead of exempting the applicant from making half-street improvements on all four street frontages, the Director required improvements to only one side (134th Avenue) with the following explanatory finding and corresponding Condition A-3:

> Staff is persuaded that the benefit of constructing full frontage improvements for all roads which abut the project will not be compatible with their cost. However, staff finds that proportionate measures to mitigate the traffic impact of the development can be provided if the frontage improvements are confined to NE 134th Avenue.

Ex. 9, p 3.

> A-3 The applicant shall construct a half-width improvements [sic] consisting of 18-foot half-width paved roadway, curb & gutter, and a 5-foot wide sidewalk within the existing half-width right-of-way. The proposed improvements shall be transitioned to match the existing roadways at both ends. The applicant shall continue the half-width improvements through an intersection radius having a minimum curb radius of 25-feet which ends on NE 71st Street. The proposed improvements for this road shall meet the minimum requirements of a

"Neighborhood Circulator" road in compliance with Standard Details Manual, Drawing #13. *See* Transportation Finding 5.

The site plan approval came with a total of 55 conditions (Exs. 9 & 11),[1] one of which is relevant to the perimeter landscaping issue raised by the applicant:

C-1 The applicant shall revise the proposed landscape plan to show:

a. On the north, the required landscaping scheme is an L3 in a 10-foot buffer width.
b. On the east, the required landscaping scheme is an L2 in a 10-foot buffer width.
c. On the south, the required landscaping scheme is an L2 in a 10-foot buffer width. Additional landscaping shall be provided in the section abutting Tax Lot 60 (158634).
d. On the west, the required landscaping scheme is an nL3 in a 10-foot buffer width (*See* Land Use Finding 2).

The Director's decision was issued July 23, 2004 (Ex. 11) and incorporated by reference the engineering staff report issued the same day (Ex. 9).

C. <u>The Applicant's Appeal</u>: The applicant timely appealed the Director's decision on August 5, 2004 (Ex. 17) raising two issues:

(1) <u>Road Modification (Condition A-3)</u>: The Director erred in approving only part of the requested road modification. Because the proposed use generates very little traffic (very few daily vehicle trips) and has an extremely long street frontage on four sides (approximately 730 feet), half street improvements on all four sides would be disproportionately expensive compared to the development's impact, and would constitute an unconstitutional taking.

(2) <u>Perimeter Landscaping (Condition C-1)</u>: The Director erred in requiring the L2 landscaping in a 10-foot buffer on the south side of the site adjacent to the home on TL 60. The additional landscaping is not needed because of an existing laurel hedge on the adjacent parcel; the residents of the home on TL 60 do not want additional perimeter landscaping on the vehicle impound lot, and additional landscaping could create a sight distance problem at the impound lot's primary entrance onto NE 134th Avenue.

The applicant/appellant subsequently filed a comprehensive legal memorandum (Ex. 22) and supporting documentation from the applicant's design engineer (Ex. 25). Staff issued a detailed report analyzing the appeal issues and recommended that the Hearings Examiner uphold the Director's decision, as issued, and deny the appeal (Ex. 21).

III. <u>Local Process and the Record</u>:

A preapplication conference on the application was held May 15, 2003. The proposed site plan and application were submitted on April 9, 2004 (Exs. 1 & 2), and the application was deemed

[1] The Director's decision included 31 conditions of approval and incorporated by reference the engineering staff report, which provided an additional 24 conditions of approval for a total of 55 conditions. While there is some overlap among the two sets of conditions, there is not much.

fully complete on May 7, 2004 (Ex. 3). From this, the vesting date is May 5, 2004. Notice of the Type II application and an invitation to comment were mailed to property owners within 300 feet and to the Sifton Neighborhood Association on May 19, 2004 (Exs. 5 & 6). Notice of the County's SEPA Determination of Nonsignificance (DNS) was published in the Columbian on May 19, 2004 (Ex. 4). The County received no appeals and only one comment on the SEPA Determination by the submission deadline of June 2, 2004. The single comment was from the Washington Department of Ecology (Ex. 7), and did not warrant a response. The Director of Community Development issued his decision on July 23, 2004 (Ex. 11), incorporating by reference the engineering staff report (Ex. 9), approving the site plan and related permits with a total of 55 conditions between the two decisional documents.

The applicant timely appealed the Director's decision on August 5, 2004 (Ex. 17) raising two issues. Staff mailed notice of an October 7, 2004 public hearing on the appeal on August 13, 2004 (Exs. 18 & 19) and published a notice of the hearing in the Columbian on September 14, 2004 (Ex. 20). At the commencement of the October 7th hearing, the Examiner explained the procedure and disclaimed any ex parte contacts, bias, or conflict of interest. No one objected to the proceeding, notice or procedure. No one raised any procedural objections or challenged the Examiner's ability to decide the matter impartially, or otherwise challenged the Examiner's jurisdiction.

At the hearing, Michael Uduk, County planning staff on the project, and Paul Knox, engineering staff, provided verbal summaries of the project, the Director's decision and the appeal issues. The applicant/appellant was represented by attorney LeAnne Bremer, of Miller Nash, LLP, who provided a memorandum explaining the legal and evidentiary bases for the appeal (Ex. 22). The applicant/appellant's transportation engineer, Howard Stein, of CTS Engineering, and design engineer, Geof Appel, of Moss & Associates, also testified and provided additional supporting evidence (Ex. 25). No one else testified or provided written comments on the matter. At the conclusion of the October 7th hearing, the Examiner closed the record and took the matter under consideration.

IV. Findings of Fact, Conclusions of Law and Discussion:

A. Street Frontage Improvements and Condition A-3: This issue first arose in the applicant's road modification request (Ex. 2, tab 12) and assumed that the County would seek half-street improvements for the site's entire 730 feet of frontage surrounded by right-of-way on four sides under CCC 40.350.030(B)(5).[2] The applicant stated that the proposed use would generate very few vehicle trips – approximately 16 additional vehicle trips per day[3] – and the

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[2] CCC 40.350.030(B)(5), the code provision for which the road modification was requested, provides that:

> General Requirement. Unless already fully developed to the transportation standards and subject to the limitations set forth in this section and in Sections 40.350.030(B)(4) and 40.350.030(B)(15), a partial-width road shall be established and constructed to the applicable right-of-way or easement and improvement standards set out in Section 40.350.030 to that portion of a frontage public or private road which abuts a parcel being developed as a condition of development approval.

[3] Howard Stein, the applicant's transportation engineer, testified that background vehicle trips on NE 134th Avenue were 2,000 to 3,000 vehicle trips per day. The 16 daily trips that would be contributed by this use constitute 0.5% to 0.8% of background.

cost of constructing half-street improvements along the site's four sides (800 feet of street frontage) – estimated to be $56,948 – was disproportionately high. The applicant asserted that the cost, in fact, was disproportionate to the impact of this development and constituted an unconstitutional taking of private property similar to the situation in *Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 49 P3d 860 (2002) (Ex. 22).

Transportation engineering staff reviewed the original road modification request and concurred in general with the applicant's analysis and conclusion that street frontage improvements on four sides was disproportionate when compared to the relatively modest impact of this proposal on the transportation system (Ex. 9). However, staff disputed some of the applicant's calculations. For example, there are approximately 730 feet of frontage on all four sides, not 800 feet as the applicant assumed (Ex. 2, tab 12). Also, approximately 50% of the applicant's cost estimate was for engineering and surveying; where as staff testified that surveying and engineering costs should be no more than 20-25%. Finally, the applicant increased its cost estimate by a 15% contingency with no justification. In light of these arguments, staff recommended a substantial reduction, but not an entire elimination, of the street frontage improvements required by 40.350.030(B)(5). Staff recommended, and the Director approved, half-street frontage improvements for only one of the four sides of the site*, i.e.,* the NE 134th Avenue frontage of approximately 190 feet, or approximately 26% of the original 730 feet.

The applicant appealed asserting that a reduction in the street frontage improvement requirement from 730 feet to 190 feet (a 74% reduction in frontage length) was still not enough and still amounted to an unconstitutional taking. The applicant asserted that 200 feet of half-width street frontage improvements along NE 134th Avenue would still cost approximately $39,093 to construct (only a 31% reduction in cost) (Ex. 22). Staff reviewed the applicant's appeal arguments and expressed doubt about the applicant's construction cost estimates (Ex. 21). In particular, engineering staff stated that:

> The subject property is surrounded by road rights-of-way on four sides. The overall road frontage totals 730 feet, more or less. The appellant submitted a cost estimate with the road modification request that calculated the total costs for the construction and engineering of 800 feet of roadway frontage improvements to be $49,520 and added a 15% contingency for a total of $56,948. This total includes surveying and engineering fees estimated to be 50% of the estimated construction cost, which is a substantially higher percentage than is typical for road improvement project. Engineering and surveying costs for County road projects typically range from 10-15% of the construction cost. Small projects, which do not benefit from economies of scale, have engineering and surveying costs which typically range from 20-25% of the construction cost.

Ex. 21, p 4.

Following issuance of the staff report on appeal (Ex. 21), the applicant's engineer justified the unusually high engineering and surveying costs by saying that County road frontage projects are more expensive than other projects because of the inordinate amount of correspondence that is required to communicate with the County engineers (Ex. 22). Also, frontage projects on existing streets are more expensive due to utility lines and above-ground obstacles that must be addressed in addition to the need to match new improvements with existing improvements in the right-of-way.

As a starting point, the Examiner agrees that the proper analysis is whether the cost of the improvements required are "roughly proportional" to the impact caused by the development. This is the fundamental collective holding of the U.S. Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), as applied by the Washington Supreme Court in *Benchmark Land Co. v. City of Battle Ground*, *supra*. In the *Dolan* decision, the Supreme Court explained its reasoning for this standard:

> We think a term such as "rough proportionality" best encapsulates what we hold to be the requirement of the Fifth Amendment. No precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development.

Dolan v. City of Tigard, 114 S.Ct. at 2320-21.

The *Benchmark* court acknowledged this standard, but decided the case on evidentiary grounds and avoided the constitutional issue. In other words,, the Court found that the record lacked sufficient evidence to show the necessary relationship between the exaction of street frontage improvements and traffic impacts of the subdivision in that case. The concurring opinion of Justice Sanders clarified that the operative evidentiary standard for exactions in Washington is RCW 80.02.020, which provides in relevant part:

> [N]o county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, … on the development, subdivision, classification, or reclassification of land. …
>
> This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. …
>
> No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is <u>reasonably necessary as a direct result</u> of the proposed development or plat.

RCW 82.02.020 (emphasis added).

Therefore, the proper analysis here must focus on this particular development, the burdens it imposes on the transportation system, the particular type and level of transportation infrastructure needed to serve the site, and the cost of providing that type and level of infrastructure.

The required improvements at issue here appear to be 190 feet of street frontage along NE 134th Avenue, *i.e.,* construction of curb and sidewalk within the existing right of way, not the original starting point of 730 feet of frontage improvements, not the 800 feet or the 200 feet of improvements used by the applicant's engineer for its cost estimates (Ex. 2, tab 12 & Ex. 22). The actual likely cost of these improvements is less clear due to what appears to be a certain amount of padding in the cost estimates provided by the applicant's engineer. First, the length of street frontage improvements along NE 134th Avenue, taken from the applicant's scale drawing (Ex. 1, appears to be 190 feet, and not the 200 feet assumed in the most recent cost

estimate (Ex. 22), a 5% difference. Second, the Examiner does not accept a 15% contingency as a reasonable part of this cost estimate. There is no attempt to justify a contingency, much less one as large as 15%. At a minimum, the 15% contingency appears to duplicate the extraordinarily high surveying and engineering costs.

Third, the Examiner agrees with county engineering staff that 50% for engineering and surveying is not reasonable or justified. The Examiner is not convinced that construction of the required improvements will involve as much surveying and engineering as the applicant's engineer asserts. County engineering staff have extensive experience with precisely these sorts of projects, *i.e.,* public and private projects constructing street frontage improvements. Consequently, the Examiner finds that the testimony and expert opinion of county engineering staff is more credible and believable than that of the applicant's engineer, especially in light of the above-mentioned problems with the applicant's cost estimate. From this, the Examiner finds that the estimated construction total should be closer to $19,000, plus 25% for engineering and surveying ($4,750) for an approximate total of $23,750 in street frontage improvement costs, not the $39,093 estimated by the applicant's engineer (Ex. 22).

The undisputed traffic impact of this development is very small, apparently an increase of approximately 16 new vehicle trips per day onto NE 134th Avenue, which is approximately 0.5% to 0.8% of the background traffic volume on that street. There is no indication in the record of any traffic safety deficiencies caused by this development nor of any preexisting traffic safety deficiencies that affect the site. It is also apparent that NE 134th Avenue is the only access to the site. Vehicles entering and exiting the site will use 134th Avenue in both directions. All pedestrians walking to and from the site will also use that frontage in both directions. Currently, there is no curb or sidewalk along this frontage to separate pedestrians from vehicular traffic. In other words, it appears that the minimum facilities necessary for safe pedestrian passage are lacking.

It appears reasonably clear that NE 134th Avenue currently functions for both vehicles and pedestrians; however, that is not to say that this segment of NE 134th Avenue is necessarily safe, much less, optimal in the type and level of transportation infrastructure. Clark County has made the policy decision to adopt certain design standards for safe streets, including sidewalks, that provide an adequate margin for pedestrian safety. CCC Table 40.350.030. For NE 134th Avenue, an urban neighborhood circulator street, this type and level of infrastructure improvement requires sidewalks and a curb that separates pedestrians from vehicular traffic. *See* CCC Table 40.350.030-4. This proposed use will introduce both vehicles and pedestrians to NE 134th Avenue, albeit, small numbers of both, and that combination contributes to a need for the minimum pedestrian safety facilities identified by the Board of Commissioners for this street.[4]

In the Examiner's view at least some level of frontage improvements is reasonably necessary as a direct result of the proposed development. These facilities would serve to protect the safety of pedestrians using the site as well as pedestrians simply walking along NE 134th Avenue who will be exposed to vehicles using the site. The question then becomes what is the minimal level and type of frontage improvements needed to address the minimal pedestrian and vehicle impact created by this development. There are few choices. The Director has determined, and the Examiner agrees, that frontage improvements on four sides is not justified. However, the Examiner also rejects the applicant's assertion that no improvements

[4] The Examiner assumes that curb and sidewalk facilities serve mostly to protect pedestrians. The proposed use will generate pedestrian traffic and vehicular traffic.

are necessary to serve, or needed by, this development. The minimum level and type of infrastructure improvement therefore is frontage improvements along only one side (190 feet), and then only sidewalk, curb and stormwater facilities.

RCW 82.02.020 permits only the exaction of improvements reasonably necessary as a direct result of the proposed development. The undisputed evidence in the record is that this use will create at least some level of vehicular and pedestrian impact on the surrounding street system; although, that impact will be small. The Examiner finds that frontage improvements (curb, sidewalk and stormwater facilities) are the minimum type and level of improvement possible along this section of NE 134th Avenue and which are reasonably necessary as a direct result of this development. This, in the Examiner's view, satisfies the findings and evidentiary burden that was found not to be met in *Benchmark*. The question then becomes whether this minimal level of frontage improvements also passes muster under the *Dolan* test.

The "rough proportionality" required by *Dolan*, and which was not addressed in *Benchmark*, creates an imprecise standard. The Court, however, was clear in saying that no precise mathematical calculation is required and that it was not embracing the exacting correspondence standard, described as the "specific and uniquely attributable" test, used by a minority of states. In the present situation, the proportionality is admittedly rough, but it is not that rough. The cost of the improvements is not reliably divined from the cost estimates provided by the applicant's engineer, but should be in the neighborhood of $23,750. While this is not an inconsequential amount, it is relatively small in the context of modern development in an urban area, and it represents the minimal level of improvements possible while still providing some level. Because the type and level of improvements being required of this developer are the minimum possible in this situation, the cost is also deemed to be the minimum possible. In that light, the Examiner also finds the cost of frontage improvements along the site's NE 134th Avenue frontage are roughly proportional to the modest vehicular and pedestrian impact expected from this development.

B. Perimeter Landscaping and Condition C-1: This appeal argument includes two issues. First, the applicant/appellant argues that the Director erred in requiring L2 landscaping and a 10-foot buffer adjacent to TL 60, which is industrially (ML) zoned but developed with a single-family home. Second, the applicant/appellant asserts that installation of L2 landscaping at the site's access to NE 134th will create a sight distance problem.

B1 – What perimeter landscaping standard applies: The Director's decision requires L2 landscaping within a 10-foot buffer along the south boundary of the site, which abuts another industrially zoned parcel (ML). To reach this conclusion, the Director relied on CCC Table 40.320.010-1 and Table 40.230.080-2. The applicant asserts that the only applicable landscaping standard is CCC Table 40.320.010-1, which is L1 landscaping within a 5-foot buffer.

CCC 40.320.010.C states that the landscaping prescribed in CCC Table 40.320.010-1 shall control. That table requires L1 landscaping in a 5-foot buffer in the Industrial (ML) zone when abutting another industrially zoned parcel (ML) and where there is no intervening street. Where there is an intervening street, CCC Table 40.320.010-1 requires L2 landscaping within a 10-foot buffer. The southern border of this property abuts TL 60 for half of its length and abuts NE Kerr Avenue for the other half (Ex. 1). TL 60 is zoned ML (Light Industrial) and so too is the property south of the site across NE Kerr Avenue (Ex. 15). From this, the Examiner concludes that L1 landscaping in a 5-foot buffer is required for that portion of the site abutting TL 60, and

L2 landscaping within a 10-foot buffer is required where the property abuts NE Kerr Avenue. This conclusion is also consistent with CCC 40.320.010.E, which provides in pertinent part:

> 1. A minimum five (5) foot wide strip landscaped to at least an L2 standard or a minimum ten (10) foot wide strip landscaped to at least an L1 standard shall be provided where vehicle parking or loading abuts a public road or right-of-way.
>
> 2. Where a vehicle parking or loading area abuts a property with zoning or land other than the proposed land use, the area shall be landscaped as provided in Table 40.320.010-1 abutting the other property.

CCC 40.320.010.E.

As staff notes in its report to the Hearings Examiner (Ex. 21), CCC Table 40.230.080-2 (lot setbacks, lot coverage and building height requirements for the ML and MH zones) includes the following footnote:

> 3. Additional setbacks and/or landscaping requirements may apply, particularly abutting residential uses or zones. *See* Section 40.320.010 of this title.

CCC Table 40.230.080-2 (footnote 3).

According to staff, this footnote authorizes the imposition of additional landscaping beyond what is set forth in CCC Table 40.320.010-1 because the site abuts a residential use, *i.e*., the home on TL 60 (Ex. 21). The Examiner disagrees. In reviewing the referenced code section, the Examiner finds nothing that requires more landscaping in this particular situation than what is shown in CCC Table 40.320.010-1. CCC 40.320.010.E(1)&(2) confirms that conclusion. Contrary to staff's interpretation, use of the term "may" in footnote 3 to Table 40.230.080-2 does <u>not</u> grant the Director unbridled discretion to require more landscaping than what is specifically stated in CCC 40.320.010 and its accompanying table. The footnote clearly directs the reader to other possibly applicable landscaping requirements in CCC 40.320.010. If no additional landscaping requirements in that section apply, then no additional requirements can be imposed. Because CCC 40.320.010 does not appear to provide any additional applicable landscape requirements for this particular situation, the Director lacks the authority to require more than what is prescribed in CCC Table 40.320.010-1.

B2 – <u>Must the applicant landscape the western-most part of the south boundary</u>: In light of the foregoing discussion, this subissue may be moot. While installation of L1 landscaping within a 5-foot buffer adjacent to NE 134th Avenue <u>could possibly</u> involve tall bushes that might block the view of a driver turning onto NE 134th Avenue from the site, *i.e.,* interfere with sight distance, the applicant should endeavor to avoid that situation. At a minimum, the Examiner does not view the possibility of tall, sight obscuring bushes to be a sufficient basis to exempt the applicant from the landscape requirements in CCC Table 40.320.010-1. The applicant/appellant must comply with the landscape requirements in CCC Table 40.320.010-1, <u>and</u> it must also comply with the sight distance requirements in CCC 40.350.030(B)(8).

V. <u>Conclusion and Decision</u>:

Based on the foregoing findings of fact and conclusions of law, in addition to the findings and conditions contained in the Director's decision (Ex. 11) and the engineering staff report (Ex.

9), the Examiner denies in part and upholds in part the appeal and approves the site plan with the following modification to Condition C-1:

C-1 The applicant shall revise the proposed landscape plan to show:

a. On the north, the required landscaping scheme is an L3 in a 10-foot buffer width.
b. On the east, the required landscaping scheme is an L2 in a 10-foot buffer width.
c. On the south, the required landscaping scheme is a L2 landscaping in a 10-foot buffer where the site abuts NE Kerr Avenue and L1 landscaping in a 5-foot buffer where the site abuts TL 60. The applicant shall still comply with the sight distance requirements of CCC 40.350.030(B)(8) at its driveway onto NE 134th Avenue.
d. On the west, the required landscaping scheme is an nL3 in a 10-foot buffer width (*See* Land Use Finding 2).

Date of Decision: October, ____, 2004.

By: _____
Daniel Kearns,
Land Use Hearings Examiner

Notice of Appeal Rights

An appeal of any aspect of the Hearings Examiner's decision may be appealed to the Board of County Commissioners only by a party of record. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing or submitted written testimony prior to or at the public hearing on this matter.

Any appeal of the final land use decisions shall be filed with the Board of County Commissioners, 1300 Franklin Street, Vancouver, Washington, 98668 within 14 calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the applicant;

2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 18.600.100A) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designated one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;

3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error;

4. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal must also explain why such evidence should be considered, based on the criteria in subsection 18.600.100(D)(2); and

5. A check in the amount of $239 (made payable to the Clark County Board of County Commissioners).